UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,945	10/20/2000	Nobuyuki Itoh	PL08243.001/201130.407	6477

27476 7590 07/02/2003

Chiron Corporation
Intellectual Property - R440
P.O. Box 8097
Emeryville, CA 94662-8097

EXAMINER	
ROMEO, DAVID S	
ART UNIT	PAPER NUMBER
1647	9

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/692,945	ITOH ET AL.	
	Examiner	Art Unit	
	David S Romeo	1647	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 March 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-52* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-52* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-11, 30, 34-44, drawn to a polynucleotide, classified in class 536, subclass 23.5.

II. Claims 12-17, 21, 45-49, drawn to a polypeptide, classified in class 530, subclass 350.

III. Claims 18-20, 31, 50-52, drawn to an antibody, classified in class 530, subclass 387.1.

IV. Claims 22, 23, 28, 29, to the extent that they are drawn to a method using drug, bio-affecting and body treating compositions, designated organic active ingredient containing (DOAI) polynucleotide for providing trophic support the polynucleotide encoding the amino acid sequence of SEQ ID NO: 4, classified in class 514, subclass 44.

V. Claims 24-27, to the extent that they are drawn to a method using drug, bio-affecting and body treating compositions, designated organic active ingredient containing (DOAI) polypeptide for providing trophic support the polypeptide comprising the amino acid sequence of SEQ ID NO: 4, classified in class 514, subclass 12.

VI. Claims 32, 33, to the extent that they are drawn to a method using drug, bio-affecting and body treating compositions, designated organic active ingredient containing (DOAI) a polynucleotide for alleviating a cochlea-associated disease

the polynucleotide encoding the amino acid sequence of SEQ ID NO: 4, classified in class 514, subclass 44.

VII. Claims 32, 33, to the extent that they are drawn to a method using drug, bio-affecting and body treating compositions, designated organic active ingredient containing (DOAI) polypeptide for alleviating a cochlea-associated disease the polypeptide comprising the amino acid sequence of SEQ ID NO: 4, classified in class 514, subclass 12.

The inventions are distinct, each from the other because of the following reasons:

The polynucleotides of Invention I are related to the polypeptides of Invention II by virtue of encoding same. The polynucleotide has utility for the recombinant production of the polypeptide in a host cell. Although the polynucleotide and polypeptide are related since the polynucleotide encodes the specifically claimed polypeptide, they are distinct inventions because they are physically and functionally distinct chemical entities, and the polypeptide product can be made by another and materially different process, such as by synthetic polypeptide synthesis or purification from the natural source. Further, the polynucleotide may be used for processes other than the production of the polypeptide, such as a nucleic acid hybridization assay.

The polynucleotide of invention I and the antibody of Invention III are related by virtue of the polypeptide that is encoded by the polynucleotide and necessary for the production of the antibody. However, the polynucleotide itself is not necessary for antibody production and both are wholly different compounds having different compositions and functions. Therefore, these inventions are distinct.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case I could be used for production of the polypeptide, in a nucleic acid hybridization assay, or in VI.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case I could be used for production of the polypeptide, in a nucleic acid hybridization assay, or in IV.

Inventions II and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case II could be used in vitro for the identification of agonists and antagonists thereto, as an immunogen for the production of antibodies, or in VII.

Inventions II and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

§ 806.05(h)). In the instant case II could be used in vitro for the identification of agonists and antagonists thereto, as an immunogen for the production of antibodies, or in V.

The following pairwise combinations of products and methods are independent and distinct, wherein the respective products may neither be produced by, nor used in the respective methods: I and each of V and VII; II and each of IV and VI; III and each of IV-VII.

The polypeptide of invention II is related to the antibody of Invention III by virtue of being the cognate antigen, necessary for the production of the antibody. Although the polypeptide and antibody are related due to the necessary stearic complementarity of the two, they are distinct inventions because they are physically and functionally distinct chemical entities, and because the polypeptide can be used in another materially different process from the use for production of the antibody, such as in a pharmaceutical composition in its own right, or in assays for the identification of agonists or antagonists.

The following pairwise combinations of methods are independent and distinct, wherein each member of a pair performs different functions, using different starting materials and/or process steps and/or with different outcomes: IV and each of V-VII; V and each of VI-VII; VI and VII.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the searches required are not coextensive, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

If group I, above, is elected Applicant is also required to elect a single group from groups 1-18. An election of a single group from groups 1-18 is an election amongst independent and distinct inventions and IS NOT AN ELECTION OF SPECIES.

1. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 1-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 2-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids at least 30 contiguous amino acids of SEQ ID NO: 4, a polynucleotide encoding a fragment having FGF activity of SEQ ID NO: 4.

2. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 2-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids at least 30 contiguous amino acids of SEQ ID NO: 4, a polynucleotide encoding a fragment having FGF activity of SEQ ID NO: 4.

3. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 1-169 of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 2-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-169 and 187-211 of SEQ ID NO: 4.

4. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 187-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 2-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-169 and 187-211 of SEQ ID NO: 4.

5. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 170-186 of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 2-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 59-193 of SEQ ID NO: 4.

6. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 59-193 of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 2-211 of SEQ ID NO: 4.

7. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids at least 30 contiguous amino acids of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 2-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-169 of SEQ ID NO: 4, a polynucleotide encoding amino acids 59-193 of SEQ ID NO: 4, a polynucleotide encoding a fragment having FGF activity of SEQ ID NO: 4.

8. A polynucleotide at least 90% identical to a polynucleotide encoding a fragment having FGF activity of SEQ ID NO: 4, a polynucleotide encoding amino acids 1-211 of SEQ ID NO: 4, a polynucleotide encoding amino acids 2-211 of SEQ ID NO: 4.

9. A polynucleotide encoding amino acids 1-169 and 187-211 of SEQ ID NO: 4.

10. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 1-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 2-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids at least 30 contiguous amino acids of SEQ ID NO: 2, a polynucleotide encoding a fragment having FGF activity of SEQ ID NO: 2.

11. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 2-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-212 of SEQ ID NO: 2, a

polynucleotide encoding amino acids at least 30 contiguous amino acids of SEQ ID NO: 2, a polynucleotide encoding a fragment having FGF activity of SEQ ID NO: 2.

12. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 1-169 of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 2-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-169 and 187-212 of SEQ ID NO: 2.

13. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 187-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 2-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-169 and 187-212 of SEQ ID NO: 2.

14. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 170-186 of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 2-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 59-193 of SEQ ID NO: 2.

15. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids 59-193 of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 2-212 of SEQ ID NO: 2.

16. A polynucleotide at least 90% identical to a polynucleotide encoding amino acids at least 30 contiguous amino acids of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 2-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-169 of SEQ ID NO: 2, a polynucleotide encoding amino acids 59-193 of SEQ ID NO: 2, a polynucleotide encoding a fragment having FGF activity of SEQ ID NO: 2.

17. A polynucleotide at least 90% identical to a polynucleotide encoding a fragment having FGF activity of SEQ ID NO: 2, a polynucleotide encoding amino acids 1-212 of SEQ ID NO: 2, a polynucleotide encoding amino acids 2-212 of SEQ ID NO: 2.

18. A polynucleotide encoding amino acids 1-169 and 187-212 of SEQ ID NO: 2.

Each of 1-18 is independent and distinct, wherein none are required for the production or use of the other, and wherein each can be manufactured independently of the other and used for independent and distinct purposes. In addition, the searches required are not co-extensive.

If group II or III, above, is elected Applicant is also required to elect a single group from groups 19-28. An election of a single group from groups 19-28 is an election amongst independent and distinct inventions and IS NOT AN ELECTION OF SPECIES.

19. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 1-211 of SEQ ID NO: 4, a polypeptide comprising the amino acid sequence of amino acids 2-211 of SEQ ID NO: 4, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 4.

20. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 2-211 of SEQ ID NO: 4, a polypeptide comprising the amino acid sequence of amino acids 1-211 of SEQ ID NO: 4, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 4.

21. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 170-186 of SEQ ID NO: 4, a polypeptide comprising the amino acid sequence of amino acids 1-211 of SEQ ID NO: 4, a polypeptide comprising the amino acid sequence of amino acids 2-211 of SEQ ID NO: 4, a polypeptide comprising the amino acid sequence of amino acids 59-193 of SEQ ID NO: 4, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 4.

22. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 1-169 and 187-211 of SEQ ID NO: 4, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 4.

23. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 59-193 of SEQ ID NO: 4, a polypeptide comprising the amino acid sequence of amino acids 1-211 of SEQ ID NO: 4, a polypeptide comprising the amino acid sequence of amino acids 2-211 of SEQ ID NO: 4, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 4.

24. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 1-212 of SEQ ID NO: 2, a polypeptide comprising the amino acid sequence of amino acids 2-212 of SEQ ID NO: 2, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 2.

25. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 2-212 of SEQ ID NO: 2, a polypeptide comprising the amino acid sequence of amino acids 1-212 of SEQ ID NO: 2, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 2.

26. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 170-186 of SEQ ID NO: 2, a polypeptide comprising the amino acid sequence of amino acids 1-212 of SEQ ID NO: 2, a polypeptide comprising the amino acid sequence of amino acids 2-212 of SEQ ID NO: 2, a polypeptide comprising the amino acid sequence of amino acids 59-193 of SEQ ID NO: 2, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 2.

27. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 1-169 and 187-212 of SEQ ID NO: 2, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 2.

28. A polypeptide comprising an amino acid sequence at least 95% identical to amino acids 59-193 of SEQ ID NO: 2, a polypeptide comprising the amino acid sequence of amino acids 1-212 of SEQ ID NO: 2, a polypeptide comprising the amino acid sequence of amino acids 2-212 of SEQ ID NO: 2, an epitope-bearing portion of the amino acid sequence of SEQ ID NO: 2.

Each of 19-28 is independent and distinct, wherein none are required for the production or use of the other, and wherein each can be manufactured independently of the other and used for independent and distinct purposes. In addition, the searches required are not co-extensive.

This application contains claims directed to the following patentably distinct species of the claimed invention: 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, or 50 contiguous amino acids of SEQ ID NO: 2 or SEQ ID NO: 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, an epitope-bearing portion of SEQ ID NO: 2 is generic to the contiguous amino acids of SEQ ID NO: 2 and an epitope-bearing portion of SEQ ID NO: 4 is generic to the contiguous amino acids of SEQ ID NO: 4.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

This application contains claims directed to the following patentably distinct species of the claimed invention: 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225,

226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, or 600 contiguous nucleotides from the coding region of SEQ ID NO: 3 or SEQ ID NO: 1.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 35-37 are generic to the contiguous nucleotides of SEQ ID NO: 1 and claims 2-4 are generic to the contiguous nucleotides of SEQ ID NO: 3.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

ANY INQUIRY CONCERNING THIS COMMUNICATION OR EARLIER COMMUNICATIONS FROM THE EXAMINER SHOULD BE DIRECTED TO DAVID S. ROMEO WHOSE TELEPHONE NUMBER IS (703) 305-4050. THE EXAMINER CAN NORMALLY BE REACHED ON MONDAY THROUGH FRIDAY FROM 7:30 A.M. TO 4:00 P.M.

IF ATTEMPTS TO REACH THE EXAMINER BY TELEPHONE ARE UNSUCCESSFUL, THE EXAMINER'S SUPERVISOR, GARY KUNZ, CAN BE REACHED ON (703) 308-4623.

IF SUBMITTING OFFICIAL CORRESPONDENCE BY FAX, APPLICANTS ARE ENCOURAGED TO SUBMIT OFFICIAL CORRESPONDENCE TO THE FOLLOWING TC 1600 BEFORE AND AFTER FINAL RIGHTFAX NUMBERS:

BEFORE FINAL (703) 872-9306
AFTER FINAL (703) 872-9307

IN ADDITION TO THE OFFICIAL RIGHTFAX NUMBERS ABOVE, THE TC 1600 FAX CENTER HAS THE FOLLOWING OFFICIAL FAX NUMBERS: (703) 305-3592, (703) 308-4242 AND (703) 305-3014.

CUSTOMERS ARE ALSO ADVISED TO USE CERTIFICATE OF FACSIMILE PROCEDURES WHEN SUBMITTING A REPLY TO A NON-FINAL OR FINAL OFFICE ACTION BY FACSIMILE (SEE 37 CFR 1.6 AND 1.8).

FAXED DRAFT OR INFORMAL COMMUNICATIONS SHOULD BE DIRECTED TO THE EXAMINER AT (703) 308-0294.

ANY INQUIRY OF A GENERAL NATURE OR RELATING TO THE STATUS OF THIS APPLICATION OR PROCEEDING SHOULD BE DIRECTED TO THE GROUP RECEPTIONIST WHOSE TELEPHONE NUMBER IS (703) 308-0196.

DAVID ROMEO
PRIMARY EXAMINER
ART UNIT 1647

DSR
JUNE 30, 2003